

## Federal Highway Administration, DOT

## § 635.204

U.S.C. 112(b) for a State transportation department to request approval that highway construction work be performed by some method other than contract awarded by competitive bidding.

[48 FR 22912, May 23, 1983]

### § 635.202 Application.

This subpart applies to all Federal-aid and other highway construction projects financed in whole or in part with Federal funds and to be constructed by a State transportation department or a subdivision thereof in pursuant of agreements between any other State transportation department and the Federal Highway Administration (FHWA). This subpart does not apply to projects constructed under a Certification Acceptance Plan in those States where the Secretary has discharged his/her responsibility pursuant to 23 U.S.C. 117, except where employees of a political subdivision of a State are working on a project outside such political subdivision.

[48 FR 22912, May 23, 1983]

### § 635.203 Definitions.

The following definitions shall apply for the purpose of this subpart:

(a) A *State transportation department* is that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term *State* should be considered equivalent to *State transportation department* if the context so implies.

(b) Except as provided for as emergency repair work in § 668.105(i) and in § 635.204(b), the term *some other method* of construction as used in 23 U.S.C. 112(b) shall mean the *force account* method of construction as defined herein. In the unlikely event that circumstances are considered to justify a negotiated contract or another unusual method of construction, the policies and procedures prescribed herein for force account work will apply.

(c) The term *force account* shall mean the direct performance of highway construction work by a State transportation department, a county, a railroad, or a public utility company by use of labor, equipment, materials, and

supplies furnished by them and used under their direct control.

(d) The term *county* shall mean any county, township, municipality or other political subdivision that may be empowered to cooperate with the State transportation department in highway matters.

(e) The term *cost effective* shall mean the efficient use of labor, equipment, materials and supplies to assure the lowest overall cost.

(f) For the purpose of this part, an *emergency* shall be deemed to exist when emergency repair work as provided for in § 668.105(i) is necessary or when a major element or segment of the highway system has failed and the situation is such that competitive bidding is not possible or is impractical because immediate action is necessary to:

- (1) Minimize the extent of the damage,
- (2) Protect remaining facilities, or
- (3) Restore essential travel.

This definition of *emergency* has no applicability to the Emergency Relief Program of 23 CFR part 668.

[39 FR 35158, Sept. 30, 1974, as amended at 48 FR 22912, May 23, 1983; 52 FR 45172, Nov. 25, 1987]

### § 635.204 Determination of more cost effective method or an emergency.

(a) Congress has expressly provided that the contract method based on competitive bidding shall be used by a State transportation department or county for performance of highway work financed with the aid of Federal funds unless the State transportation department demonstrates, to the satisfaction of the Secretary, that some other method is more cost effective or that an emergency exists.

(b) When a State transportation department determines it necessary due to an emergency to undertake a federally financed highway construction project by force account or negotiated contract method, it shall submit a request to the Division Administrator identifying and describing the project, the kinds of work to be performed, the method to be used, the estimated costs, the estimated Federal Funds to be provided, and the reason or reasons that an emergency exists.